THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.7524 OF 2007

DATED: 06-07-2007

BETWEEN

M/s. Jayaram Industries,
Rep. by its Managing Partner,
Konda Jayaramulu,
S/o. Ramachandram,
Occ: Business,
R/o. H.No.18-6-175,
F.C.I. Road, Godavarikhani,
Ramagundam Mandal,
Karimnagar District.

…PETITIONER

AND

A.P. State Finance Corporation,
Rep. by its General Manager
(Projects), Chirag Ali Lane,
Hyderabad and another.

…RESPONDENTS

ORDER:

Petitioner – firm seeks a Writ of Mandamus to declare the action of the respondents in not giving the machinery, which is installed at its costs, described in the representation dated 15.11.2006 as illegal and arbitrary and to direct the respondents to handover the same to it.

2. Learned counsel for the petitioner submits that the petitioner-firm made a representation dated 15.11.2006 before the second respondent stating that a sum of Rs.86,40,000/- had been sanctioned to it vide Term Loan Ac.No.58323317/2002/2003 and it had taken a sum of Rs.74,11,000/- for purchase of machinery for the rice mill.

He further submits that the rice mill could not function well and therefore, the said unit was seized under Section 29 of the State Financial Corporations Act, 1951 (for short 'the Act') but the machinery purchased by the petitioner-firm on its own was not returned. Therefore, the petitioner-firm requested the respondents to give back the machinery mentioned in the representation, total 6 items, worth about Rs.11 Lakhs.

3. Learned counsel for the second respondent submit that pursuant to the application of the petitioner for grant of term loan of
Rs.86.40 Lakhs for establishing a rice mill at Plot No.16/A, IDA, Ramagundam, Karimnagar District, the loan was sanctioned on 18.07.2002 and an amount of Rs.74,10,992/- was released after creating equitable mortgage of the land, building, plant and machinery along with any future acquisitions of plant and machinery by executing necessary documents. He further submits that as the petitioner admittedly committed default in payment of installments,
the respondent – Corporation after following due process of law seized the unit on 28.12.2005 and sold the same in favour of M/s. MRK Industries on 20.07.2006 for sale consideration of Rs.61.50 Lakhs by invoking power under Section 29 of the Act. After payment of total sale consideration by the auction purchaser, possession of the said unit was delivered and sale deed dated 18.12.2006 was also executed in favour of M/s. MRK Industries duly registering the sale in the office of the Sub-Registrar, Peddapalli, Karimnagar District. He further submits that the unit was seized after conducting Panchanama in the presence of the representative of the petitioner i.e. Konda Jayaramulu, Managing Partner and officials of the Andhra Bank, Godavarikhani Branch and a copy of the panchanama was also supplied to the petitioner and all the items, which were seized were mentioned in the panchanama, total of 30 items. Insofar as the representation of the petitioner is concerned, it is stated that a reply was already given on 23.11.2006 stating that the machinery financed by the Corporation alone was available in the

premises and the same was sold in favour of M/s. MRK Industries on 06.11.2006 by conducting another panchanama.

4. Learned counsel for the second respondent further submits that the machinery seized was the one financed by the Corporation and no additional machinery was available in the premises as alleged by the petitioner in its representation. He further submits that a reply was already given to the petitioner's notice dated 15.11.2006 stating that there is no other machinery, said to have been purchased by the petitioner, available in the premises at the time of seizure. In fact, as per the hypothecation agreement dated 04.10.2002 and sanction letter dated 18.07.2002 the term loan was secured by equitable mortgage of the land and buildings and buildings to be constructed thereon and hypothecation of plant and machinery as proposed therein and all future acquisitions of fixed assets including machinery. He further submits that even assuming that the petitioner purchased some of the machinery; the same would automatically stand hypothecated to the Corporation.

5. In view of the aforesaid disputed questions of fact, I am of the opinion that the said issues cannot be decided in a writ petition.

The writ petition is accordingly dismissed. There shall be no order as to costs.

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V. ESWARAIAH, J

July 6, 2007
DSK